

EXHIBIT 57

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 Before The Honorable Vince Chhabria, District Judge
4
5 HOWARD, et al,)
6 Plaintiffs,)
7 vs.) Case No. C 22-00527-VC
8 HAIN CELESTIAL GROUP, INC.,)
9 et al,)
10 Defendants.)

11 San Francisco, California
12 Tuesday, August 10, 2023

13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
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1 Tuesday, August 10, 2023

1:25 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Now, calling civil case 22-527, Howard
5 et al versus Hain Celestial Group, Inc.

6 Will counsel please state your appearances for the
7 record, starting with the plaintiff?

8 MS. REYNOLDS: Apologies, your Honor. I'm having
9 a problem with my speaker. Just one moment. Can you hear
10 me?

11 THE COURT: Yes.

12 MS. REYNOLDS: Okay.

13 THE COURT: Can you hear me?

14 MS. REYNOLDS: Oh, now I can. Okay. There we go.

15 THE COURT: Okay.

16 MS. REYNOLDS: Good afternoon, your Honor. Hayley
17 Reynolds, counsel for plaintiffs.

18 THE COURT: Hi.

19 MR. SMITH: And good afternoon, your Honor. Alex
20 Smith for Hain Celestial.

21 THE COURT: Hi.

22 MR. PANOS: And good afternoon, your Honor. Dean
23 Panos on behalf of Hain Celestial, although Mr. Smith will
24 be handling the -- any discussions with the Court on behalf
25 of --

1 THE COURT: Okay. So, you know, on the -- you
2 know, on the second issue that Hain Celestial raised, I
3 don't need to hear any argument about that, on the issue of,
4 you know, the back of the label clearing up an ambiguity on
5 the front of the label. That -- the motion for
6 reconsideration is denied on that point.

7 On the first point, the fraud question and the Howard
8 -- what was -- the case was Howard vs. Gerber. Obviously, I
9 have now concluded that I analyzed that issue incorrectly in
10 this -- the fraud issue in this case, right, and in the
11 Howard vs. Gerber case, I sort of identified how I -- you
12 know, I -- how I addressed it incorrectly in this case.

13 So, you know, there's no question that I analyzed the
14 issue incorrectly. The question is just whether I should
15 grant a motion for reconsideration now or whether it -- this
16 can just be sorted out at summary judgment. And I think
17 there are two questions implicated by that.

18 One is, does this affect the -- would this -- would my
19 granting of the motion or partially granting the motion and,
20 say, dismissing, you know, the fraud claims or some of the
21 fraud claims, would it affect the class certification
22 proceedings, and then -- and so -- and if not, then maybe
23 that is an argument for concluding that, you know, it
24 doesn't really -- yeah, I analyzed it incorrectly at the
25 motion to dismiss stage, but it doesn't really matter, and

1 we can just deal with it at summary judgment.

2 The other related question is, well, even if I applied
3 the standard that I adopted in the Howard vs. Gerber case,
4 would that result in dismissal of the fraud claims relating
5 to these labels, or would we need to conduct an analysis of
6 that? And that may be further argument for just waiting
7 until the summary judgment stage of the proceedings to sort
8 of address the question.

9 So that's -- I mean, I guess that's mainly a question
10 for the defendants, but, Ms. Reynolds, maybe I'll start with
11 you and have you respond to both of those questions.

12 MS. REYNOLDS: Sure, your Honor. With regards to
13 the first one, the effect on class certification, if your
14 Honor were to dismiss the fraud claims without leave to
15 amend and certification were only to go forward on the
16 unlawfulness claim, then that certainly changes the scope of
17 class certification and what evidence and arguments we would
18 be putting forth there, because there is a difference in
19 some of the standards for a UCL unlawfulness claim versus a
20 fraud claim, for example, issues of reliance and materiality
21 are different for those two claims.

22 THE COURT: Well, but you don't have to show
23 reliance for the absent class members, right?

24 MS. REYNOLDS: That's right. But there is an
25 issue -- so what -- the main issue comes down to the

1 interpretation by a reasonable consumer, and all of those
2 issues that get carried along with fraud are not present in
3 the unlawfulness claim.

4 THE COURT: But why would that matter for the
5 class cert proceedings?

6 MS. REYNOLDS: Well, it would just change, I
7 suppose, which claims are being certified, but it would be
8 the same class of purchasers, if that answers your question.

9 THE COURT: Yeah. But I'm -- like, you have a --
10 you have a class certification motion due in -- like pretty
11 soon, in like three weeks or something like that, right?
12 But it's the same -- I mean, it's the same class, and it's
13 all the same questions implicated about whether to certify
14 the class, whether we're talking about -- I mean, I guess
15 you're right, technically, if I dismiss those claims, I
16 wouldn't certify a class as to those claims. But it's all
17 the same. I mean, it would be the same class -- it would be
18 the same issues implicated in the decision whether to
19 certify the class, right? I mean, I don't -- I'm not really
20 seeing why there would be -- there would be much of a
21 difference.

22 MS. REYNOLDS: Well, the issue -- so I would want
23 to take some time here maybe to go back and make sure I have
24 clarity on -- before giving too much of an answer here. But
25 I believe that the main issues are -- the difference is

1 going to be proving the misleading nature, so expert
2 evidence that's going come in to discuss why these products
3 are harmful.

4 THE COURT: But that would be in summary judgment,
5 right? That would not be at class certification. You
6 wouldn't -- I mean -- because we don't care who's right and
7 who's wrong on the question of fraud at class certification
8 stage, right?

9 MS. REYNOLDS: Fair, your Honor. I suppose
10 there's -- we still anticipate at least a discussion of what
11 that common evidence would be on those issues and similarly
12 with what is a reasonable consumer standard and what -- and
13 I believe there is case law that requires for a fraud claim
14 and a misleading claim that a consumer survey needs to be
15 conducted and submitted at the class certification stage.
16 So that, I think, is actually the biggest difference, off
17 the top of my head.

18 THE COURT: That surprises me. I'm not saying I
19 don't believe you, but it's sort of surprising that you
20 would need to submit a consumer survey at the class
21 certification stage. But anyway -- sorry. Okay. Go ahead.

22 MS. REYNOLDS: Well, those -- that's really the
23 two big differences in what a class certification motion
24 would look like with an unlawfulness claim versus just the
25 -- or just the unlawfulness claim versus additionally the

1 fraud claim. It comes down to a difference in what kinds of
2 expert evidence we would at least discuss and/or submit at
3 the class certification motion.

4 THE COURT: Okay. And then what about my second
5 question, which is, should we be, you know -- and I'm not
6 sure I articulated my second question very well, so I'll do
7 it again. But, you know, assuming application of the
8 correct standard or, you know, what I concluded is the
9 correct standard in the Howard vs. Gerber case, would that
10 affect the outcome of the -- would that have affected the
11 outcome of the motion to dismiss?

12 MS. REYNOLDS: So as we -- we explained this, I
13 think, in the opposition that we do not believe the outcome
14 would be different because the -- your Honor shifted to
15 examining the label as a whole, and what does this claim do
16 to perpetuate the understanding or the misleading nature of
17 the claim? And while there were different statements at
18 issue in the Gerber case, we believe that the same issue or
19 the same analysis would result in plaintiffs having
20 sufficiently stated the claim for the fraud claims. Because
21 these claims, like excellent source or the four grams
22 protein, et cetera, exists on labels in the context of
23 images of real fruits and vegetables, real picture images of
24 meats and beans, all the ingredients, alongside the terms
25 like "organic," and even the brand name Earth's Best, along

1 with explicit statements on some of the products, such as
2 "wholesome snacks" on the Organic Crunchin' Crackers and
3 "make nutritious habits happen." The Earth's Best Organic
4 Letter of the Cookies Day (sic.) state that they are a
5 "nutritious and great tasting way for kids to learn their
6 ABCs."

7 We also have -- I recognize that this would be more
8 applicable to online buyers, but there are online statements
9 that perpetuate the idea that this is intended be a
10 nutritious product and that those excellent source claims in
11 the context of these labels and statements would reasonably
12 -- lead a reasonable consumer to believe these products are
13 healthy for their child under two.

14 THE COURT: And so what you -- and so I guess --
15 the absolute worst case scenario for you would be, you know,
16 granting the motion for reconsideration, dismissing the
17 claims. But I would have -- it would have to be with leave
18 to amend to give you an opportunity to better articulate why
19 the -- those aspects of the labels -- the nutrient content
20 claims on the labels are sort of misleading under the
21 standard articulated in Howard vs. Gerber. That would be
22 your worst case scenario.

23 An alternative would be to -- you know, to -- you know,
24 to conclude that even under the standard articulated in
25 Howard vs. Gerber, you can't decide at the pleading stage

1 whether these are misleading, that -- you know, you can't
2 decide at the pleading stage definitively whether or not a
3 reasonable consumer would be misled by the nutrient content
4 claims in the context where they appear on the label. You
5 have to go to -- you know, you have to go to expert
6 testimony and whatever to answer that question. It may be a
7 jury question. Maybe it's a question you can answer at
8 summary judgment. But it's not a question that you can
9 answer on -- at the pleading stage, at least on these facts,
10 given these labels.

11 And so that, I guess, would be an argument for denying
12 the motion for reconsideration and just sort of plowing
13 ahead to the -- or -- I don't know if -- I don't know if,
14 technically, it would be denying reconsideration or granting
15 reconsideration and then reaching the same conclusion on
16 reconsideration. That always confuses me. But the outcome,
17 I guess, would be the same, which is, no, we're not going to
18 dismiss these claims because they're not amenable to
19 adjudication at the pleading stage.

20 MS. REYNOLDS: Yes, your Honor. And I think a
21 simple way to get there without getting in the weeds on
22 application of Gerber is perhaps going back to the standard
23 of reconsideration, which calls for a material change in
24 law. And I recognize that, of course, your Honor's --
25 Gerber represents your change in thought and analysis here.

1 But, often, that material change in law really refers to
2 binding precedent. And so it could be that there is a
3 denial for the motion for reconsideration because Gerber
4 doesn't represent the material change in law because it's
5 not binding precedent while still understanding for us,
6 going forward at summary judgment, et cetera, that this is
7 going to be, you know, your view of the analysis of these
8 claims.

9 THE COURT: Okay. All right. I can't remember
10 who it was.

11 Mr. Smith, do you want to address those questions?

12 MR. SMITH: Yes. Thank you, your Honor. I'll
13 start with the second question first, if that's okay.

14 THE COURT: Yeah.

15 MR. SMITH: I think that we all agree that the
16 Court's analysis -- the lens through which it viewed the
17 misleading claims in Gerber is the lens through which we're
18 going to view these claims for the rest of the case, whether
19 that be now, whether that be at summary judgment, that
20 that's the correct lens through which to view the misleading
21 claims.

22 THE COURT: I mean, I don't know if it's the
23 correct lens, but it's -- you know, maybe it's got its own
24 problems, but it's more correct than the previous lens
25 through which I was viewing these claims.

1 MR. SMITH: We certainly agree with that. So
2 under -- you know, the -- in Gerber, I think this Court
3 correctly distinguished between statements that imply that
4 the product is healthy as a general matter -- that was the
5 phraseology the Court used -- versus "bare statements and
6 nutrients." And I think that all of the statements at issue
7 here are bare statements and nutrients, right? We have
8 statements like four grams protein, three grams plant
9 protein, zero grams of trans fat, even excellent source
10 claims, which are, you know, FDA-regulated nutrient content
11 claims that state how much of a nutrient is in the product.

12 THE COURT: But, I mean, just looking at -- you
13 know, just as an example, like, you know, the first product,
14 the Protein Puree, and it says three grams of plant protein.

15 MR. SMITH: Yes.

16 THE COURT: But it also -- right next to it --
17 it's -- the name of the product is right next to it, which
18 is Protein Puree. And you see that in the context of the
19 word "organic" appearing twice, Earth's Best, pictures of
20 fruits and vegetables -- actually, organic appears three
21 different times, and it's sort of the totality of the --
22 totality of the label. You know, it conveys the message of
23 this is a healthy product. And then I think you ask, well,
24 to what extent does the three grams of plant protein
25 statement -- the nutrient content statement contribute to

1 the message on the label of this is a healthy -- you know,
2 here's a healthy product for your baby. And I think the
3 answer is, it could -- I think a reasonable consumer might
4 view that as contributing a significant amount to the
5 impression that it's a healthy product for your baby. Why
6 isn't that -- why isn't it an issue that should be decided
7 at the summary -- I mean, at the pleading stage?

8 MR. SMITH: Sure. I think there are a few things
9 on that point, your Honor. So one is that -- you know, the
10 statements they've challenged in this case are the nutrient
11 content claims. It's not the use of the phrase "organic."
12 It's not the use of the phrase "Earth's Best." It's not any
13 of the other images. So I think it's really the question of
14 whether this statement -- you know, three grams protein,
15 say, is a statement that's likely to mislead reasonable
16 consumers about the healthiness of the product, you know,
17 even viewed as a whole. And --

18 THE COURT: But I think it would be fair. Let me
19 -- and I apologize for interrupting, but I just -- I think
20 it would be fair to -- in deciding this motion for
21 reconsideration to imagine what their allegations would be
22 like in an amended complaint, right? Because -- the
23 question is like, is it -- what's the point of granting the
24 motion for reconsideration? Is anybody really prejudiced if
25 we deny the motion for reconsideration? And I think -- you

1 know, imagining the allegations -- you know, they've got the
2 benefit of the Howard vs. Gerber decision. They would sit
3 down and they would amend their complaint, and they would
4 articulate allegations about how the -- you know, the
5 appearance of the nutrient content claim in the context of
6 all the other stuff on the label, you know, is misleading,
7 and misleading from the standpoint of sort of conveying the
8 impression that it's a healthy product when it's not.

9 And, you know, it's hard -- I guess it's hard to
10 imagine -- once they sit down and they amend their complaint
11 to conform it to the standard set out in Howard vs. Gerber,
12 it's sort of difficult to imagine that that -- that those
13 claims would ultimately be dismissed. So it seems like we
14 might be sort of -- you know, sort of hitting the rewind
15 button in this case, you know, and going way back to the
16 beginning for really no reason at all.

17 MR. SMITH: I mean, your Honor, I think --

18 THE COURT: Because, ultimately, you're going to
19 have to make your case at summary judgment on this.

20 MR. SMITH: So, again, your Honor, I don't think
21 that -- regardless of what they were to plead in an amended
22 complaint, it's not clear to me -- not remotely clear that
23 they could allege these nutrient content claims are false or
24 misleading or likely to mislead a reasonable consumer. Even
25 if they -- you know, I don't think that they can say that

1 these claims are what contributes to an overall perception
2 that the product is healthy. Like, imagine, hypothetically,
3 these products without the nutrient content claims on them.
4 They still said "organic," they still said "Earth's Best,"
5 all of these things. And it's not clear that the adding a
6 truthful, accurate nutrient content claim like three grams
7 of protein is going to make an -- you know, is going to
8 change a consumer's perception of whether the product --

9 THE COURT: I agree with the statement you just
10 made. It's not clear that it's going to change a consumer's
11 perception, but I don't think that's the standard at the
12 motion to dismiss, right? To win on a motion to dismiss,
13 you have to sort of convince me that it's clear that it
14 wouldn't change a consumer's perception in a meaningful way
15 about the product being healthy -- the healthiness of the
16 product, right?

17 MR. SMITH: Your Honor, I think that we could
18 convince you of that. And I think that, you know, in
19 Gerber, I think this Court correctly distinguished between
20 these bare statements and nutrients and statements that
21 contribute to the overall impression that a product is
22 healthy. And we are very convinced that the statements at
23 issue here, the nutrient content claims, fall very much in
24 the bare statements and nutrients bucket. And a bare
25 statement and nutrient -- an accurate bare statement of a

1 nutrient can't be misleading as a matter of law. And at the
2 very minimum, we think it's worth resolving that issue
3 before we sort of expend time and resources figuring out
4 whether we can certify a class on those claims. It sort of
5 brings me to your first question --

6 THE COURT: Okay.

7 MR. SMITH: -- which is that I -- I don't totally
8 agree with Ms. Reynolds about the contours of our claims,
9 but I think that we can agree that the misleading claims,
10 even at the class certification stage, require an analysis
11 into how reasonable consumers would have understood the
12 labeling, whether there are material differences in how
13 consumers would understand the labeling, whether -- you
14 know, whether there's a class-wide theory of injury, and
15 that theory will depend on sort of the individual use case
16 and the circumstances under which consumers purchase these
17 products. And regardless of whether we think the unlawful
18 claim is amenable to class certification, and we don't, that
19 claim is analytically distinct from the misleading claims,
20 the way that we will both approach it with our expert
21 discovery, our survey experts, and the way that we'll sort
22 of approach a class certification is going to differ.

23 And so I think it's worthwhile for us to determine
24 whether this case can proceed on these misleading claims
25 before we figure out how we're going to invest our time and

1 resources in the class certification. Ultimately, it
2 doesn't make a lot of sense for us to litigate a claim at
3 class certification, spend probably hundreds of thousands of
4 dollars on surveys and expert work if, you know, the Court
5 will ultimately conclude that the misleading claims are not
6 viable as a matter of law.

7 THE COURT: I hear what you're saying. I briefly
8 was distracted by one passing comment you made, which was
9 that you don't believe that the unlawful claims are amenable
10 to class certification. How do you think you're going to
11 get class certification defeated on the unlawful claims?

12 MR. SMITH: We think that the injury -- even if
13 you assume that the products are intended specifically for
14 children under two and that the claim is unlawful -- and
15 we're not conceding that. But even if you were to assume
16 that for purposes of class certification, the injury that a
17 consumer would have suffered as a result of the use of those
18 claims is going to vary a lot, depending on the age of the
19 child for whom the product was purchased, the parents'
20 understanding of who the product was intended for, you know,
21 a variety of sort of circumstances relating to the use case
22 for this product.

23 THE COURT: So you're saying that they can't just
24 have a price premium model that would work in this case? I
25 mean, I -- why -- I guess I don't understand why not.

1 MR. SMITH: Well, because I think the price
2 premium --

3 THE COURT: I realize we don't have a motion for
4 class certification pending, but I was just -- I mean, it
5 jumped out at me. I mean, why -- I don't understand why a
6 price premium type model wouldn't work in a case like this.

7 MR. SMITH: Well, a price premium model is
8 supposed to capture a certain type of economic injury. And
9 our point here is that there are certain consumers,
10 depending on the age of the child for whom the product was
11 purchased, the use case, et cetera, who would have suffered
12 no injury, economic or otherwise. And because I think that
13 the injury that any parent or any consumer would have
14 suffered as a result --

15 THE COURT: I mean, I thought this was a product
16 that was designed for babies who are the age of my baby, and
17 I thought that it was healthy. So, you know, they convinced
18 me that it was a healthy product for babies the age of my
19 baby. And it turns out that the FDA has said, no, it's not,
20 or we can't assume that it is. And if I had known that, I
21 wouldn't have paid as much for it.

22 MR. SMITH: Well, sure. But if a parent, you
23 know, bought this product -- I mean, our view is these --
24 that these products are intended specifically for a child
25 over two, that they're intended for preschool age children

1 between ages two and five. And if you're a parent who
2 believes that these products are intent --

3 THE COURT: Right. And if you're -- if that ends
4 up being correct, you win on the merits. But I'm just
5 talking about class certification.

6 MR. SMITH: No, I understand that, your Honor. So
7 if you're a parent who buys the product for a child over
8 two, understands the product is for a child over two,
9 there's no injury that you suffered as a result. You bought
10 -- you got exactly the product you purchased with a nutrient
11 content claim that accurately reflected the nutritional
12 profile.

13 THE COURT: But we -- I mean, in these -- we never
14 engage in that sort of inquiry in these class action food
15 labeling cases. I mean, you could say that about every food
16 labeling case, or you could say, well, some members of the
17 class might have known that this product was not all
18 natural, or some -- you know, some of the -- some of the
19 class members might have known that it contained this
20 ingredient, even though you implied on the front that it
21 didn't contain this -- I mean, you can say that about every
22 food labeling case. I just don't see how that's going to
23 get you out of class certification. But maybe we shouldn't
24 -- maybe we shouldn't. I have a few more cases on calendar.
25 Maybe we shouldn't talk about it anymore now. I'm obviously

1 happy to entertain these arguments more seriously when they
2 come in.

3 MR. SMITH: Yeah.

4 THE COURT: Is there anything else you wanted to
5 say on the motion for reconsideration before we go to the
6 next case?

7 MR. SMITH: You know, I think that it's worth --
8 unless you are dead set on the point about McGinity, I think
9 there are some points that we would want to make on that --

10 THE COURT: Dead set on the point about what,
11 sorry?

12 MR. SMITH: The first issue about McGinity v.
13 Procter & Gamble, the new --

14 THE COURT: Oh, yeah, I'm dead set about that.

15 MR. SMITH: Okay. Then I won't waste your time,
16 and I appreciate you hearing us out.

17 THE COURT: Okay. Thank you very much. I know
18 that you have this class certification motion coming up very
19 soon, so I will -- I want to give it a little more thought,
20 but I'll issue a ruling very, very shortly.

21 MR. SMITH: Understood, your Honor. Thank you.

22 THE COURT: Okay.

23 MS. REYNOLDS: Thank you.

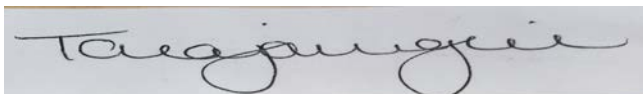
24 THE COURT: Thank you.

25 (Proceedings concluded at 1:49 p.m.)

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in cursive script, appearing to read "Tara Jungi", is centered on a light gray rectangular background.

Echo Reporting, Inc., Transcriber

Friday, August 18, 2023